

Unit Overview

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1.1 Unit Instructions — Scope and Objectives

A. Instructions

- 1) Read the entire unit.
- 2) Read the Code of Judicial Conduct and the two Ethical Opinions in the Reference Section.
- 3) Complete the Unit 1 review and instructional activities in Section 1.8, and check your answers using the answer key in Section 1.9.
- 4) Complete the unit evaluation form.
- 5) For your own information, obtain a copy of the Administrative Order appointing you as magistrate.

B. Scope and Objectives

As an attorney or non-attorney district court magistrate, you are responsible for making a wide range of decisions that affect individuals' legal rights. It is essential that these decisions be made wisely and correctly. To properly carry out your duties, you must be knowledgeable about court procedures in general, and about your role as a magistrate in particular. This unit is intended to provide you with a general overview of the Michigan court system, and the magistrate's role within that system. You should be aware, however, that every district court will have its own individual policies and practices relating to magistrates, discussion of which is beyond the scope of this Manual. Accordingly, your training as a magistrate should also include taking steps to thoroughly familiarize yourself with your court's policies and practices as they relate to your duties.

After completing this unit you will be able to:

- Identify the levels of Michigan courts and types of cases heard in each level;
- Differentiate between trial and appellate courts;
- Identify the magistrate's duties as defined by Michigan law;
- Recognize the district judge's power of review and control over the magistrate;
- Provide documentation of your court's policies and procedures outlining the magistrate's assigned duties; and,
- Produce a signed copy of your court's order appointing you as a magistrate.

1.2 Introduction — Historical Perspective on Traffic Cases

When use of the automobile became so widespread that it created traffic safety problems, state and local governments reacted by enacting laws forbidding speeding, drunk driving, and other dangerous conduct on Michigan's roads. These laws created traffic offenses that were **criminal** in nature. As criminal offenses, they were subject to fines and jail terms. Accused offenders were tried in the criminal courts and afforded the full range of constitutional safeguards available to criminal defendants, including the right to counsel, the right to a jury trial, and proof of guilt beyond a reasonable doubt.

As the number of drivers and vehicles increased, the criminal courts proved unable to cope with the burden imposed by the corresponding increase in the number of minor traffic violations. The burden became particularly intolerable during the 1960s, when the U.S. Supreme Court expanded the constitutional rights of the accused in criminal proceedings, and judicial budgets became tighter. Courts and public officials increasingly recognized that the criminal system was inadequate to process minor traffic violations that were not perceived as "criminal" because they rarely received jail sentences. Nevertheless, the mere possibility that a speeder or careless driver could go to jail meant that he or she was entitled to all the procedural safeguards of a criminal trial, including jury trial, appointed counsel, and proof beyond a reasonable doubt. These safeguards were constitutionally mandated so long as traffic offenses were classified as crimes and jail was a possible punishment.

In 1979, the Michigan Legislature took steps to relieve the burden on the criminal courts by decriminalizing many of the minor traffic offenses. Decriminalized minor traffic violations are now known as "**civil infractions**." Although the offender is still referred to as the "defendant," he or she no longer responds to a citation for a minor traffic offense by pleading "guilty" or "not guilty." Instead, civil infraction defendants either *admit responsibility* for the infraction, with or without explanation, or *deny responsibility* for the infraction. Most importantly, civil infraction defendants are no longer subject

to a jail sentence upon a finding of responsibility for the infraction. Instead, a responsible defendant is penalized with a *civil fine* or other *civil sanction*.

Note: Michigan law provides for many types of civil infractions in addition to the traffic infractions found in the Michigan Vehicle Code (MVC). Other types of infractions are **municipal civil infractions** and **state civil infractions**. See MCL 600.113.* Examples of municipal civil infractions include building and other licensing violations, park and curfew violations, fire code violations, and nuisance ordinances (e.g., blight). Examples of state civil infractions include violations of statutes, administrative rules, and director's orders under the Natural Resources and Environmental Protection Act, which governs such areas as land use, littering, marine safety, off-road vehicles, and snowmobiles. This Manual is concerned only with traffic civil infractions under the MVC and local traffic ordinances.

Because a jail term is no longer a possible penalty for a civil infraction, the accused offender is no longer entitled to the same constitutional protections given criminal defendants. Accordingly, the offender's responsibility for a civil traffic offense can be determined expeditiously at an informal hearing, rather than at a formal criminal trial. The Legislature has authorized district court magistrates to conduct these informal traffic hearings, upon completion of a training course in traffic law adjudication and sanctions. MCL 600.8512(2). This Manual is part of the statutory training course that district court magistrates must complete before conducting an informal hearing in a civil infraction case under the MVC.

Note: Although the focus of this Manual is on procedure in civil infraction cases under the MVC, it is important to remember that not all of Michigan's traffic offenses have been decriminalized. Many traffic offenders are still subject to criminal penalties (i.e., jail time) and the accompanying constitutional safeguards afforded to criminal defendants. Michigan law recognizes two categories of criminal offenses. The most serious criminal offenses are known as **felonies**. Felonies are subject to more than one year's imprisonment and/or a fine. Felonious driving, unlawful driving away an automobile, and manslaughter are examples of felony traffic offenses. Less serious criminal offenses are known as **misdemeanors**. Misdemeanors are subject to a maximum of one year in prison and/or a fine. Reckless driving and driving with a suspended or revoked license are examples of traffic misdemeanors. A few misdemeanors are called "high court," "two-year," or "circuit court" misdemeanors. These offenses are subject to up to two years in prison and/or a fine. Negligent homicide is an example of a high court traffic misdemeanor. The magistrate has no power to adjudicate a defendant's guilt or innocence in a criminal traffic case, except under limited circumstances that will be described in Sections 1.4(B) and 2.4(C). For discussion of traffic felonies and misdemeanors, see Michigan Judicial Institute, *Traffic Benchbook - Revised Edition* (1999).*

*"MCL 600.113" (and similar references that will appear in this unit) tell the reader where to locate the statutes that contain the rules stated in the text. The meaning of these citations and the use of statutes will be discussed in Sections 2.2-2.3.

*The maximum penalties for felonies that do not have punishment specifically described are four years/\$5,000.00; for misdemeanors 90 days/\$500.00. See MCL 750.503 and MCL 750.504, respectively. These maximum penalties reflect recent amendments that took effect March 1, 2003. See 2002 PA 722 and 2002 PA 723, respectively.

1.3 The Michigan Court System

The Michigan Constitution of 1963 provides for “one court of justice”— a uniform state court system headed by the Michigan Supreme Court. In this system, civil lawsuits and criminal prosecutions are initiated in a “trial court,” which hears testimony, examines evidence, and so determines what factual events took place in a case. Having determined what factually occurred in a case, the trial court then applies the governing law to those events to reach its decision. In a case tried before a jury, the jury resolves the factual issues in the case, in the context of jury instructions on the applicable law provided by the judge. The judge decides what law applies to the case, and decides questions of a purely legal nature. Where there is no jury in a case, the judge resolves questions of both law and fact.

If a party is not satisfied with the trial court’s application of the law in its case, it has at least one appeal to a higher “appellate” court. An appellate court does not take testimony or examine evidence the way a trial court does. It generally takes the trial court’s findings about the facts of the case as true and restricts its review to the trial court’s application of the law governing a case. To evaluate the trial court’s decision, the appellate court examines the trial court’s written record as well as the legal arguments of each party’s attorney. A jury is not empaneled at the appellate level in a case because there are usually no issues of fact to review on appeal.

If the trial court made legal or procedural errors serious enough to affect the outcome of a case and deny someone a just result, the appellate court will either overturn the trial court’s decision (**reverse** or **vacate**), or send the case back to the trial court with instructions on how to apply the law correctly (**remand** the case). If the appellate court finds no error in the lower court’s actions in a case, it **affirms** the lower court’s decision. Appellate courts in Michigan issue written opinions explaining their decisions that are published for members of the bench and bar. These published appellate opinions are binding legal authority that trial courts are required to follow.*

The Michigan Constitution and the state Legislature have created the following types of trial courts:*

- Circuit court;
- District court;
- Probate court;
- Municipal court; and,
- Court of Claims.

The Constitution further provides for two levels of appellate courts:*

- The Court of Appeals; and,
- The Supreme Court.

Each of the above trial courts presides over a specifically assigned geographical district. Moreover, each trial court presides over specifically assigned types of cases or carries out designated functions in particular types

*The use of published appellate opinions is also discussed at Sections 2.2(D) and 2.3(C).

*The Michigan court system is summarized in a chart appearing in Section 1.6.

*Circuit courts also act as appellate courts in some cases. See the discussion at Section 1.3(A).

of cases. These venue and subject matter limitations on a court's power to preside over cases determine its **jurisdiction**. A court's jurisdiction is its power to interpret and apply the law.

Where a statute restricts a trial court to hearing and deciding specific types of legal controversies, that court is known as a court of **limited jurisdiction**. A trial court whose jurisdiction is not so restricted by statute is known as a court of **general jurisdiction**. In Michigan, the circuit court is the trial court of general jurisdiction. The other trial courts are courts of limited jurisdiction.

If a statute mandates that a particular type of case will only be heard in a particular court, that court is said to have **exclusive jurisdiction** over that type of case.

The rest of this section briefly discusses the jurisdiction of each of the above courts that comprise Michigan's "one court of justice."

A. Circuit Court

The circuit court is a trial court with general jurisdiction. It can hear all actions except those given by constitution or statute to another court.

The circuit court is divided into 57 judicial circuits. Most circuits cover one county, although some consist of multiple counties. Effective January 1, 1998, circuit courts consist of criminal, civil, and family divisions, which hear and decide the following kinds of cases:

- Adult criminal offenses punishable by more than one year in prison. (Criminal Division.) MCL 600.601, 600.8311.*
- Domestic relations matters, such as paternity, divorce, child custody, and child support. (Family Division.) MCL 600.1021.
- Juvenile matters, such as juvenile delinquency, child protection, adoptions, parental consent waivers, and emancipation of minors. (Family Division.) MCL 600.1021.
- Personal protection orders. (Family Division.) MCL 600.1021(k).
- Name changes. (Family Division.) MCL 600.1021(d).
- Some civil infractions committed by juveniles, as provided by an agreement with a district or municipal court within the circuit court's geographic jurisdiction. (Family Division.) MCL 712A.2(a)(1), 712A.2e. However, the district court has jurisdiction over civil infractions by juveniles in violation of the Vehicle Code. *Welch v District Court*, 215 Mich App 253, 256-257 (1996).
- Civil suits involving more than \$25,000. (Civil Division.) MCL 600.605, 600.8301.
- Appeals from the district court, the probate court (on a limited basis) and some administrative agencies. (Civil Division.) MCL 600.631, 600.863, 600.8342.

*The meaning of the citations in this section is discussed in Sections 2.2-2.3.

*A suit in equity is a suit in which the plaintiff seeks some remedy other than monetary damages.

- Suits in equity, such as suits seeking an injunction.* (Civil Division.) MCL 600.601.

Circuit court decisions are appealable to the Court of Appeals.

The circuit court is served by referees, quasi-judicial officials who conduct hearings in domestic relations and juvenile matters.

B. District Court

The district court is a trial court of limited jurisdiction. It is divided into 104 judicial districts, ranging in size from a single city or township to multiple counties. The district court has exclusive jurisdiction over the following types of cases:

- Civil suits involving \$25,000 or less. MCL 600.8301.
- Adult criminal misdemeanor offenses punishable up to and including one year's imprisonment. MCL 600.8311.
- Civil infractions committed by adults. MCL 600.8301.
- Some civil infractions committed by juveniles, as provided by an agreement with a circuit court within the district court's geographic jurisdiction. MCL 712A.2(a)(1), 712A.2e.*
- Landlord/tenant disputes, such as eviction proceedings. MCL 600.5714.
- Land contract forfeitures. MCL 600.5726.
- Small claims (civil suits involving \$3,000 or less). MCL 600.8401.
- Some suits in equity, such as cases seeking an injunction (the district court's jurisdiction in this area is limited). MCL 600.8302.

In addition to its jurisdiction to try adult criminal offenses punishable by up to and including one year's imprisonment, the district court is the court in which all other adult criminal proceedings begin, regardless of the nature of the offense. In carrying out this function, the district court has jurisdiction to:

- Issue arrest and search warrants, subpoena witnesses, order production of records, and punish contempt. MCL 600.8317.
- Set bail and accept bond. MCL 600.8311(c).
- Conduct misdemeanor and felony arraignments. MCL 600.8311(c).
- Preside over preliminary examinations for felony and misdemeanor offenses outside its trial jurisdiction. MCL 600.8311(d).

District court decisions are generally appealable to the circuit court, although a different appeal process applies to informal hearings involving civil traffic infractions. Informal hearing procedures will be covered in the following units.

*For a discussion of juvenile traffic actions, which are beyond the scope of this benchbook, see Miller, *Juvenile Traffic Benchbook* (MJI, 1999).

Magistrates perform quasi-judicial functions in the district court. Their duties are summarized in Section 1.4.

C. Probate Court

The probate court is a trial court of limited jurisdiction. MCL 600.841. Each of Michigan's 83 counties has a probate court, with the exception of ten counties that have consolidated to form five probate court districts, for a total of 78 probate courts. Each district has one judge, and each of the remaining counties has one or more judges, depending on population.

Effective January 1, 1998, the probate court has jurisdiction over estates, guardianships, conservatorships, and mental health commitments.

Probate court decisions are normally appealable to the circuit court but may, in some instances, be appealed to the Court of Appeals.

D. Municipal Court

A few municipalities have chosen to have a municipal court rather than a district court. These are: Eastpointe,* Grosse Pointe, Grosse Pointe Farms, Grosse Pointe Park, and Grosse Pointe Woods. Municipal court jurisdiction is limited to claims not exceeding \$1500 in civil cases, unless the city in which the court is located passes a resolution increasing the amount to \$3000. MCL 730.522. Jurisdiction over criminal and civil infraction traffic cases is the same as in district court. MCL 257.741(2).

*Effective January 1, 2004, the Eastpointe municipal court will be abolished and instead will commence to function as a district court. See 2002 PA 681.

E. Michigan Court of Claims

As a general rule, a state cannot be sued without its consent. Michigan has granted that consent by establishing the Court of Claims, a court that has exclusive jurisdiction over claims against the State of Michigan. The Court of Claims is part of the 30th Circuit Court in Ingham County. MCL 600.6404.

F. Michigan Court of Appeals

The Court of Appeals is an appellate court. The Court of Appeals hears appeals from circuit court and, in some cases, probate court. Appeals are heard before panels of three Court of Appeals judges, who hear appeals in Lansing, Detroit, Grand Rapids, and Marquette.

A decision of the Court of Appeals may be appealed to the Michigan Supreme Court. A litigant does not have an automatic right to be heard in the Supreme Court, however, for the Supreme Court has discretion to decide which cases it will review.

G. Michigan Supreme Court

*The U.S. Supreme Court has discretion to hear cases from the Michigan Supreme Court that address federal statutory or constitutional issues.

The Michigan Supreme Court is the state's appellate court of last resort. A case can go no further in the Michigan court system. A decision by the Michigan Supreme Court is final unless the U.S. Supreme Court decides to hear it.*

In the Michigan Supreme Court, cases are heard in Lansing, before all seven Supreme Court justices. To obtain a hearing in this court, attorneys representing cases that have been decided by lower courts file an application for "leave to appeal." The Court decides whether to grant or deny leave to appeal. If leave is granted, the Court will hear the case. If leave is denied, the lower court's decision will stand.

In addition to deciding appeals, the Michigan Supreme Court performs several other important functions:

- It exercises superintending control over all Michigan courts to ensure that they apply the law uniformly and comply with rules of procedure.
- It oversees the court system and the legal profession, and disciplines judges and attorneys who violate professional standards.
- It adopts procedural rules for Michigan courts, known as the Michigan Court Rules.*

The State Court Administrative Office works under the Supreme Court's supervision to help carry out the Court's administrative duties.

*See Section 2.2(C) for more discussion of the Michigan Court Rules.

1.4 Duties of the District Court Magistrate

In 1968, the Legislature enacted the District Court Act, which abolished the office of the justice of the peace and created the district court and the office of district court magistrate. Many of the same functions performed by today's magistrates were once performed by justices of the peace. There were many criticisms of the justice of the peace system, most of which resulted from the justices' lack of training and the absence of close judicial supervision.

District court magistrates are officers of the district court, who serve in a quasi-judicial capacity. Magistrates' authorities and duties are defined by Michigan statutes, the Michigan Court Rules, and the guidelines set out by their district judges. In no event may a magistrate's powers and duties exceed those authorized by statute or by his or her district judge. MCR 4.401(B). For instance, even though a statute may state that a magistrate has power to perform a particular duty, he or she may not exercise that power unless authorized to do so by the district judge; on the other hand, a district judge may not expand a magistrate's powers beyond the statutory provisions. The magistrate's authority will thus vary from district to district, since it is up to the presiding judge in a district to define the powers and duties of the magistrate. It is essential that the magistrate obtain from the district judge a clear definition of his or her duties and understand the magistrate's role in his or her particular court.

The rest of this section will briefly overview the magistrate's duties as prescribed by Michigan statutes. The magistrate has an important role as an officer of the district court, and a detailed discussion of many of the duties listed here is beyond the scope of this Manual. In reviewing the following list, the reader should bear in mind that the magistrate may perform only those functions authorized by the district judge.

A. Administrative Duties

Note: The citations that appear throughout this section refer to the statutes that confer on the magistrate the duties described. More discussion about the use of statutes is found at Sections 2.2-2.3.

The administrative duties of a magistrate include:

- Performing the duties of deputy clerks in small claims matters, such as accepting small claims affidavits. MCL 600.8545.
- Performing marriage ceremonies in the district where the magistrate serves, and keeping a record of all marriages performed. (The license must have already been obtained from the county clerk.) MCL 551.7(1)(b), 551.104.
- Taking oaths and affirmations. MCL 600.8317.
- Taking a person's acknowledgment of a written instrument. MCL 600.8317.
- Communicating with law-enforcement agencies and the Michigan Department of State (Secretary of State) as to traffic cases, warrants, and similar matters. See, e.g., MCL 257.732.
- Sending notices to defendants in civil infraction cases. See, e.g., 257.745(5).
- Maintaining a docket and record of case events as required by the district court clerk.* MCL 600.8555.
- Answering questions and giving nonlegal advice to other court personnel and members of the public.

Note: The State Bar's Standing Committee on Professional and Judicial Ethics has opined that a full-time attorney magistrate may not practice law without violating the Code of Judicial Conduct. A part-time attorney magistrate may practice law, but not in the district served by the district court where the attorney is acting as a magistrate. (An attorney magistrate in the 36th district may not practice law at all while serving as a magistrate.) Regardless of whether he or she is an attorney, no court employee should ever give legal advice to litigants or other members of the public. MCL 600.8525, and Informal Judicial Ethics Opinion JI-77 (December 13, 1993).*

*SCAO Forms DC 21 and 22 may be used for this purpose. See Reference Section.

*JI-77 is found in the Reference Section. See Section 1.5(B) for a discussion of the Code of Judicial Conduct and Judicial Ethics Opinions.

B. Duties in Criminal Cases

Recall from the discussion of the district court's jurisdiction in Section 1.3(B) that the district court has jurisdiction to try adult criminal cases in which the maximum penalty for the offense is one year in prison and/or a fine. Additionally, the district court is the place where all adult criminal proceedings are initiated, regardless of the seriousness of the offense. The magistrate's role in the court's performance of the foregoing functions in criminal cases is as follows:

- Issue search warrants in all cases, when authorized by a district judge to do so. MCL 600.8511(f).
- Issue arrest warrants in all cases, upon the written authorization of the prosecutor or municipal attorney. MCL 600.8511(d), 764.1. The magistrate may issue an arrest warrant without written authorization in exceptional cases, namely: (1) Traffic cases where an officer issued a traffic citation under MCL 257.728, and the defendant failed to appear; (2) cases where the warrant is requested by agents of the state transportation department, a county road commission, or the public service commission, for violations of the Motor Carrier Act, MCL 475.1 to 479.20, or the Motor Carrier Safety Act of 1963, MCL 480.11 to 480.21; or (3) cases where the warrant is requested by the director of the Department of Natural Resources (DNR) or a special assistant or conservation officer appointed by the director and declared by statute to be a peace officer, for a violation of a law providing for the protection of wild game or fish. MCL 764.1(2).
- Fix bail and accept bond in all cases. MCL 600.8511(e).
- Conduct first appearance in all cases, and accept written demand or waiver of preliminary examination and demand or waiver of jury trial. MCL 600.8513(1).
- Approve and grant petitions for the appointment of counsel for indigent defendants accused of any misdemeanor punishable by imprisonment for not more than one year, or an ordinance violation punishable by imprisonment. MCL 600.8513(2).
- Upon written authorization of the prosecutor or city attorney, sign a nolle prosequi order dismissing any criminal or ordinance violation case over which the district court has jurisdiction. However, the district judge must sign the nolle prosequi order if the preliminary examination or trial has begun, or if the judge has accepted a guilty or no contest plea. MCL 600.8513(2)(c).

In addition to the foregoing duties, magistrates have the authority to arraign defendants, accept guilty and no contest pleas, and impose sentence in specified criminal offenses. A magistrate may accept a plea of guilty or no contest and impose sentence for any misdemeanor or ordinance violation punishable *by a fine only and not imprisonment by the terms of the statute or ordinance creating the offense*. MCL 600.8511, 600.8512a(b).

If the misdemeanor or ordinance violation is punishable by a term of imprisonment, the magistrate may accept a plea of guilty or no contest and

impose sentence as provided in MCL 600.8511(a)-(c). This statute contains separate requirements for:

- Specified Vehicle Code violations where the maximum punishment does not exceed 93 days in jail and/or a fine;
- Violations of other specified statutes where the maximum punishment does not exceed 90 days in jail and/or a fine; and,
- Violations of specified parts of the Natural Resources and Environmental Protection Act where the maximum punishment does not exceed 93 days in jail and/or a fine.

1. Vehicle Code Violations

Under MCL 600.8511(b), a magistrate may arraign, accept a guilty or no contest plea, and impose sentence for a violation of the Michigan Vehicle Code (MCL 257.1 to 257.923) or a substantially corresponding local ordinance if the maximum punishment does not exceed 93 days in jail and/or a fine. *However*, this authority *does not extend* to drunk driving offenses under MCL 257.625 and 257.625m, or substantially corresponding local ordinances.* In these cases, the magistrate may arraign and set bond only.

2. Specified Violations with a Maximum Punishment of 90 Days in Jail and/or a Fine

Under MCL 600.8511(a), a magistrate may arraign, accept a guilty or no contest plea, and impose sentence for a violation of certain other acts or parts of acts (or substantially corresponding local ordinances) if the maximum punishment does not exceed 90 days in jail and/or a fine. These violations are as follows:

- Part 5 of the Natural Resources and Environmental Protection Act, regarding rules for land protection promulgated by the Department of Natural Resources, MCL 324.501 to 324.511;
- Part 89 of the Natural Resources and Environmental Protection Act, regarding littering, MCL 324.8901 to 324.8907;
- Part 401 of the Natural Resources and Environmental Protection Act, regarding wildlife conservation, MCL 324.40101 to 324.40119;
- Part 435 of the Natural Resources and Environmental Protection Act, regarding hunting and fishing licensing, MCL 324.43501 to 324.43561;
- Part 487 of the Natural Resources and Environmental Protection Act, regarding sport fishing, MCL 324.48701 to 324.48740;
- Part 731 of the Natural Resources and Environmental Protection Act, regarding recreational trespass, MCL 324.73101 to 324.73111;

*See 2 *Traffic Benchbook - Revised Edition* (MJJ, 1999), Chapter 3, for a description of these drunk driving offenses. See Section 2.2(B) for a discussion of local ordinances.

Section 1.4

*See 1 *Traffic Benchbook - Revised Edition* (MJI, 1999), Chapter 6, for a discussion of offenses involving marine vessels and personal watercraft.

- Part 801 of the Natural Resources and Environmental Protection Act, regarding marine safety, MCL 324.80101 to 324.80199;*
- The Motor Carrier Act, MCL 475.1 to 479.43;
- The Motor Carrier Safety Act of 1963, MCL 480.11 to 480.22;
- The Dog Law of 1919, MCL 287.261 to 287.290;
- Portions of the Michigan Liquor Control Act regarding possession of alcohol by persons under age 21 and consumption of alcohol in public parks, namely, MCL 436.1703 and 436.1915; and,
- Portions of the Michigan Penal Code regarding wilful trespass to property, in violation of MCL 750.546 to 750.552b.

3. Violations of the Natural Resources and Environmental Protection Act with a Maximum Punishment of 93 Days in Jail and/or a Fine

*See 1 *Traffic Benchbook - Revised Edition* (MJI, 1999), Chapters 4-5, for a discussion of offenses involving ORVs and snowmobiles.

Under MCL 600.8511(c), a magistrate may arraign, accept a guilty or no contest plea, and impose sentence for specified violations of the Natural Resources and Environmental Protection Act if the maximum punishment does not exceed 93 days in jail and/or a fine. These violations are as follows:*

- Part 811 of the Act, regarding off-road recreational vehicles (MCL 324.81101 to 324.81150), or a substantially corresponding local ordinance; or,
- Part 821 of the Act, regarding snowmobiles (MCL 324.82101 to 324.82160), or a substantially corresponding local ordinance.

The foregoing authority to accept guilty or not guilty pleas and to impose sentences *does not extend* to the following offenses, however:

- Violations of MCL 324.81134 to 324.81135 or a substantially corresponding local ordinance, regarding operating an off-road recreational vehicle while under the influence of or while visibly impaired by alcohol and/or a controlled substance.
- Violations of MCL 324.82128 to 324.82129 or a substantially corresponding local ordinance, regarding operating a snowmobile while under the influence of or while visibly impaired by alcohol and/or a controlled substance.

In these cases, the magistrate has jurisdiction to arraign defendants and to set bond.

C. Duties in Civil Cases

A magistrate may preside over admissions of responsibility and hold informal hearings in three types of civil infraction cases:

- **Michigan Vehicle Code civil infractions** or local traffic ordinances, MCL 257.746, 257.943, 257.951.
- **Municipal civil infractions**, MCL 600.8719. Examples of municipal civil infractions include building and other licensing violations, park and

curfew violations, fire code violations, and nuisance ordinances (e.g., noise, blight).

- **State civil infractions**, MCL 600.8819. These types of infractions include violations of statutes, administrative rules, and director's orders under the Natural Resources and Environmental Protection Act, which governs such areas as land use, littering, marine safety, off-road vehicles, and snowmobiles.

This Manual is concerned only with traffic civil infractions under the Michigan Vehicle Code or local traffic ordinances. Although the informal hearing process for all three of the foregoing types of civil infractions is the same, traffic cases differ with regard to licensing sanctions and the court's duty to communicate in certain instances with the Secretary of State.*

A magistrate may also hear small claims cases if he or she is licensed to practice law in Michigan. MCL 600.8514, 600.8427.

*See Section 2.5(A) regarding the court's duty to report to the Secretary of State, and licensing sanctions.

1.5 District Judge's Control over Magistrates

A. Review of Magistrate's Decisions

Michigan law provides that district judges exercise superintending control over magistrates. MCL 600.8541. This means that the district judge may review a magistrate's decision. The Michigan Court Rules provide that the district judge may supersede action taken by a magistrate, without formal appeal. MCR 4.401(C). It is unlikely that a district judge will do this, however, unless the magistrate makes a legal error or exceeds his or her authority as defined by state law, or as described in the magistrate's written authorization.

Both the Michigan statutes and court rules also provide that a dissatisfied party may appeal a magistrate's decision to the district judge.* In a civil infraction case, either the prosecuting official, at the request of the citing officer, or the cited driver may appeal the magistrate's decision. MCL 600.8515, MCR 4.401(D). An appeal from an informal hearing takes the form of a formal hearing before the district judge. The formal hearing is *de novo*; this means that the district judge hears the case as if no informal hearing had taken place. In a formal hearing, each side may raise new legal issues and introduce new evidence or testimony that was not presented in the informal hearing.

Appeal from the district judge's decision after a formal hearing is to the circuit court.

*See Sections 2.4(D) and 4.4 on procedures in appeals from a magistrate's decision.

B. Code of Judicial Conduct

The district court magistrate, because he or she exercises quasi-judicial powers, must comply with the Code of Judicial Conduct.* The Code of Judicial Conduct is the professional code of ethics for Michigan judges and magistrates. It defines the professional and personal responsibilities of those holding judicial and quasi-judicial office. By promoting high standards of

*The user of this Manual should review the Code in the Reference Section.

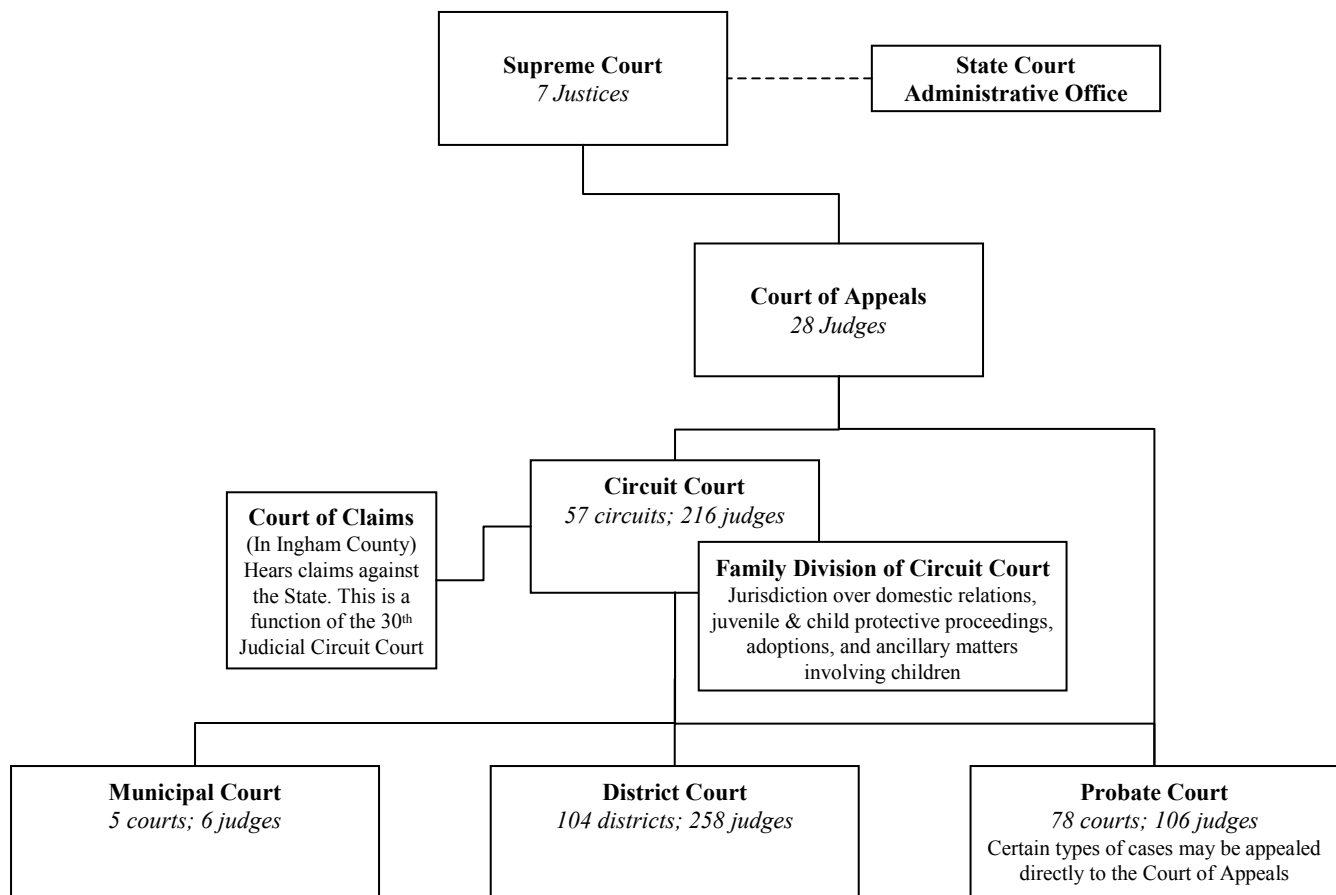
*See the Reference Section for some examples of judicial ethics opinions specifically addressing conduct by magistrates.

conduct, the Code enhances the prestige of the office in the eyes of criminal justice personnel and the general public. The Code treats judges and magistrates as a select group whose conduct reflects on the integrity of the court system.

The State Bar of Michigan has created a Standing Committee on Professional and Judicial Ethics, which renders Ethical Opinions on questions of professional responsibility submitted by judges and attorneys. These opinions address the propriety of various actions by judges and quasi-judicial personnel in light of the Code of Judicial Conduct. Some of these opinions apply directly to magistrates; others apply indirectly. While the Committee's opinions are not binding on state or federal courts, they are widely relied upon by judges and lawyers who have questions about professional responsibility.* Published ethical opinions are available on the State Bar website at <http://www.michbar.org> (last visited February 10, 2003).

Allegations of misconduct against a judge or magistrate are investigated by the Judicial Tenure Commission, which determines whether to file a formal complaint based on the allegations. If a complaint is filed, a public hearing is held before the Commission or an appointed master. After the hearing, the Commission may recommend to the Supreme Court as appropriate that a judge or magistrate be censured, suspended with or without salary, retired, or removed from office. MCR 9.201 to 9.227 contain the rules governing procedures before the Commission.

1.6 Chart — Organization of Michigan's Judicial System



Connecting lines to the Circuit Court, the Court of Appeals, and the Supreme Court represent the various levels in the appeal process.

246 courts; 621 judges and justices

Produced 2/10/03

1.7 Chart — Traffic Misdemeanors for Which a Magistrate May Impose Sentence Upon a Plea of Guilty or No Contest

Cautionary Note: This list contains examples of traffic misdemeanors for which a magistrate may impose sentence upon a plea of guilty or no contest under MCL 600.8511(b). Some of these misdemeanors are subject to a 90-day term of imprisonment; others are subject to a 93-day term. See MCL 257.901 for general penalty provisions under Motor Vehicle Code (unless a specific penalty is designated, or unless a violation is designated a felony or civil infraction, violations are misdemeanors punishable by 90 days and/or \$100).

The following list is not intended to be definitive and is limited to traffic misdemeanors. MCL 800.8511(a) and (c) list other misdemeanors for which the magistrate may also impose sentence upon acceptance of a plea of guilty or no contest.

*“MCL” refers to “Michigan Compiled Laws,” a collection of Michigan statutes. For more information, see Section 2.2(A).

MCL Section*	Description
257.215	Operate or permit to operate an unregistered vehicle (90 days)
257.233	Fail to transfer title (93 days)
257.243	Fail to register foreign vehicle (90 days)
257.255	Operate vehicle without registration plate (90 days)
257.256	Unlawful lending or use of title, registration, plate, or special permit (90 days)
257.301	Operate without valid operator’s or chauffeur’s license with appropriate designation and/or endorsement (90 days)
257.306	Operate without or violate temporary instruction permit (90 days)
257.311	Operate without or fail to display operator’s or chauffeur’s license (90 days)
257.312	Violate license restrictions (90 days)
257.312a	Drove without motorcycle endorsement (90 days)
257.315	Reporting false address on operator’s license (93 days)
257.319d(4)	Operate during 24-hour out-of-service period (90 days)
257.321a	Fail to answer citation or comply with judgment (93 days)
257.324	Prohibited use of operator’s or chauffeur’s license (90 days)
257.325	Allow unlicensed minor to drive (90 days)
257.326	Allow operation of vehicle in violation of MVC (90 days)
257.327	Employ unlicensed chauffeur (90 days)
257.602	Disobey police officer directing traffic (90 days)
257.612(4)	Fail to yield to handicapped person in crosswalk (90 days)
257.613d	Fail to stop for school crossing guard (90 days)
257.615	Improper display or use of signs or lights resembling traffic-control devices (90 days)
257.616	Interfere with traffic-control device, or railroad sign or signal (90 days)
257.618	Fail to stop after property damage accident (90 days)

MCL Section*	Description
257.619	Fail to give information and aid at accident resulting in injury or death (90 days)
257.620	Fail to stop and locate owner after accident with unattended vehicle (90 days)
257.621	Fail to stop and locate owner after fixtures accident (90 days)
257.622	Fail to report accident causing injury or death, or damage to property totaling \$400 or more (90 days)
257.623	Garage keepers or repairmen; fail to report vehicle showing evidence of involvement in accident (90 days)
257.624a	Transport/possession open alcohol (90 days)
257.624b	Person under 21 transport/possess alcohol in a motor vehicle (formerly MCL 436.33a) (90 days)
257.626	Reckless driving (90 days)
257.626a	Drag racing (90 days)
257.677a	Obstruction of vision by removal of snow, ice, or slush (90 days)
257.681	Bus; Fire extinguisher required (90 days)
257.698(5)-(6)	Improper use, sale of oscillating or rotating lights (90 days)
257.707c	Exhaust; defective, noise violation (90 days)
257.719b	Mobile Home transportation violation (90 days)
257.720	Improper loads, towing (90 days)
257.724(6)	Fail to stop for police officer (90 days)
257.904	Driving while license suspended, revoked, denied (93 days)
257.904a	Driving unlicensed, not applied in last 3 years (90 days)
257.905	Violation of financial responsibility chapter (90 days)

1.8 Review/Instructional Activities

The answers to the following questions and practice problems appear in Section 1.9.

A. Questions

Question #1

For each court listed below, mark either “T” for trial court or “A” for appellate court. Describe the types of disputes the court can hear.

_____ a. Probate court

_____ b. District court

_____ c. Circuit court

_____ d. Court of Appeals

_____ e. Supreme Court

Question #2

Fill in the blank preceding each statement with the name of the court to which the statement applies. Use the following designations: “A” for the Court of Appeals; “C” for the circuit court; “D” for the district court; “P” for the probate court; and “S” for the Supreme Court.

_____ a. Has jurisdiction over a civil suit seeking \$100,000 in damages.

_____ b. Has superintending control over all Michigan courts.

_____ c. Adoption proceedings occur in this court.

_____ d. All adult criminal proceedings begin in this court.

_____ e. This court presides over divorces and child custody disputes.

_____ f. This court has a small claims division that hears cases involving less than \$3,000.

Question #3

Mark each of the following statements as True (T) or False (F):

- ☐ a. The Court of Appeals reviews trial court decisions by retrying the case and hearing testimony necessary to reach its decision.
- ☐ b. The district court has jurisdiction over both marriages and divorces.
- ☐ c. Juries are used to decide cases in the Court of Appeals.
- ☐ d. Misdemeanor cases involving a jail term of one year or less are tried in the district court.
- ☐ e. The Attorney General enacts rules of procedure that govern proceedings in the district court.
- ☐ f. The magistrate may set bail and accept bond.
- ☐ g. The magistrate may issue search warrants when authorized to do so by the State Court Administrative Office.
- ☐ h. A magistrate may sentence a defendant who pleads guilty to a misdemeanor to up to one year in jail.
- ☐ i. A magistrate may make a speech at a public fund-raising event to support the candidacy of a friend who is running for a Senate seat in the Michigan Legislature.
- ☐ j. A magistrate, once appointed to office, may be removed from office only for misconduct.
- ☐ k. If authorized by the district judge to do so, the magistrate may sentence defendants who plead guilty to certain criminal liquor law violations where the maximum jail term does not exceed 90 days.
- ☐ l. Normally, the issuance of an arrest warrant by a magistrate must be authorized in writing by the county prosecutor or city attorney.
- ☐ m. A district judge may review any action by a magistrate without a formal appeal.
- ☐ n. A defendant sentenced by a magistrate after pleading guilty to a misdemeanor may appeal the conviction to the district judge.
- ☐ o. Every magistrate is required to report quarterly activity to the State Court Administrative Office.
- ☐ p. A magistrate may perform marriages anywhere in Michigan.
- ☐ q. All magistrates may preside over cases in the small claims division of the district court and enter judgments of up to \$3,000.

B. Practice Problems

For the following problems, you are to consider yourself the magistrate in the situation and answer the questions accordingly.

Practice Problem #1

You receive a telephone call from a citizen who tells you, "I'd like to file a lawsuit against the driver of the car that rear-ended mine on Main Street the other day. It cost me \$350 to fix my car. The deductible on my insurance policy is \$500 and my agent told me to go to court. What should I do?"

Where should this citizen file the suit?

How would you respond to the question, "What should I do?" Explain your answer.

Practice Problem #2

An individual who you found responsible for a civil infraction appealed your decision to a judge in your district court. The judge, after a formal hearing, also found her responsible. That individual is now before you again, asking how she can appeal the district judge's decision.

Can the defendant appeal? Explain your answer.

Practice Problem #3

You are stopped in the halls of your courthouse by a citizen. He tells you, "I just got an arrearage notice in the mail. I think it has something to do the child support payments the court ordered when I got my divorce. I haven't been able to make them since I lost my job. Who should I see about this?"

To what court should you direct this person? Explain your answer.

Practice Problem #4

A 15-year-old, cited for a misdemeanor traffic offense, appears before you and asks to plead guilty. The driver was stopped by a sheriff's deputy and cited for driving without a valid license.

Does the district court have jurisdiction over this case?

If the answer is "yes," explain the answer, and if the answer is "no," where must the defendant go and why? Explain your answer.

Practice Problem #5

Your district judge has authorized you only to preside over informal hearings and to accept pleas of responsibility. A police officer comes to your office, asks you to issue her a search warrant, and says that it is absolutely critical that one be obtained immediately. However, your district judge is attending a meeting in Lansing and is therefore not available. Can you issue the officer a warrant in this case?

Check one answer: _____ Yes _____ No Explain your answer.

Practice Problem #6

At an informal hearing you found a defendant responsible for speeding 70 miles per hour in a 55 mile per hour zone. The defendant argued at the hearing that the citing officer's radar unit was inherently unreliable and that, in any event, he was only following the flow of traffic. The defendant said at the informal hearing that he intended to retain an attorney and appeal your decision. You just learned the defendant did appeal and that the district judge found the defendant not responsible for speeding after a formal hearing. Does that result necessarily mean that your decision in the informal hearing was wrong?

Check one answer: _____ Yes _____ No Explain your answer.

1.9 Answer Key

A. Answers to Questions

Answers to Question #1

- a. The probate court is a trial court. It hears cases involving wills, trusts, estates, commitment of the mentally ill, guardianships, and conservatorships.
- b. The district court is a trial court. It handles civil suits of \$25,000 or less; misdemeanors (except “high court misdemeanors”); civil infractions; parking violations; landlord/tenant; small claims; foreclosures; garnishments; arraignments; preliminary examination; warrants; bail; marriages.
- c. The circuit court is a trial court that hears some appeals from district courts, probate courts, and administrative agencies. A court of general jurisdiction, it handles felony trials; “high court” misdemeanor trials; civil suits over \$25,000; equity suits; domestic relations matters; juvenile delinquency and child protection matters; adoptions; personal protection orders; name changes; emancipation of minors; waiver of parental consent to an abortion.
- d. The Court of Appeals is an appellate court that handles appeals from trial courts.
- e. The Supreme Court is an appellate court that handles appeals from the Court of Appeals; superintending control over lower courts; supervision of judges and attorneys; adoption of rules of procedure and evidence.

Answers to Question #2

- C a. The circuit court has jurisdiction over all civil suits involving more than \$25,000.
- S b. The Michigan Supreme Court has superintending control over all the lower courts.
- C c. The family division of circuit court has jurisdiction over adoptions.
- D d. Although the circuit court tries felonies and misdemeanors punishable by more than one year in jail, arraignments and preliminary examinations in these felony cases occur in the district court.
- C e. The family division of circuit court has jurisdiction over divorce and the related matters of child support, alimony, and custody.
- D f. The district court hears and decides civil suits involving \$25,000 or less. The small claims division is a division of the district court responsible for deciding suits involving \$3,000 or less, although the regular civil division may also hear and decide such claims.

Answers to Question #3

- F a. The appellate court reviews a lower court decision by examining the lower court's record and hearing each side's legal arguments.
- F b. Although a district judge or district court magistrate may perform marriages, the circuit court has jurisdiction over divorces.
- F c. Panels of three judges always decide cases in the Court of Appeals. Appellate courts only decide questions of law; juries decide questions of fact.
- T d. Civil infraction cases are also decided in the district court.
- F e. Rules governing court procedure are issued by the Michigan Supreme Court.
- T f. MCL 600.8511(e).
- F g. Authorization must come from the magistrate's district judge. MCL 600.8511(f).
- F h. The magistrate may impose sentence in misdemeanor cases under the Vehicle Code when the maximum punishment does not exceed 93 days in jail and/or a fine. However, this authority does not extend to drunk driving cases under MCL 257.625 and 257.625m. MCL 600.8511(b).
- F i. Canon 7(A) of the Code of Judicial Conduct forbids magistrates from publicly endorsing candidates for non-judicial office.
- F j. A magistrate serves "at the pleasure of" his or her district judge. MCL 600.8507(1).
- T k. MCL 600.8511(a)(vii) specifies liquor-control statutes with respect to which a magistrate may arraign, accept pleas, and impose sentence. These are MCL 436.1703 and 436.1915.
- T l. MCL 600.8511(d).
- T m. MCR 4.401(C)
- T n. MCL 600.8515 and MCR 4.401(D).
- F o. A magistrate is no longer required to make quarterly reports under MCR 8.205.
- F p. MCL 551.7(1)(b) limits the magistrate to performing marriages within his or her court's district.
- F q. Only a licensed attorney magistrate may, if authorized by the district judge, hear a small claims case and recommend a judgment. MCL 600.8514. Any authorized magistrate may, however, accept small claims affidavits under MCL 600.8545.

B. Solutions to Practice Problems

Solution to Practice Problem #1

Answer: The citizen should file suit in the small claims division of the district court. In response to the question, “What should I do?” you should respond that as an officer of the court, you are not allowed to give legal advice to members of the public. You should advise the caller to consult an attorney.

Explanation: This case is civil and the caller wishes to recover damages. Thus the suit must be filed in the district court, which has jurisdiction over civil suits involving \$25,000 or less. Michigan law provides that suits involving \$3,000 or less are heard and decided by the small claims division of the district court, but they can also be heard and decided by the regular civil division. The district court magistrate should never give legal advice to members of the public. To do so would violate the court’s obligation to dispense justice in a neutral, impartial fashion. Other improper questions that citizens might ask would be whether they should sue, or whether they have a “good chance” of success in a suit. In response to these questions, the magistrate should likewise advise the citizen to consult with an attorney.

Solution to Practice Problem #2

Answer: The defendant can appeal to the circuit court.

Explanation: A losing party has the right to appeal to the next appropriate court. In this case the decision being appealed is from the district court and thus the appeal goes to the circuit court. Although the district court heard the case *de novo*, an appeal from district court to circuit court will not be a similar retrial of the case. The circuit judge will decide the defendant’s appeal only on the basis of the district court’s formal hearing transcript to determine if an error in procedure occurred.

The magistrate may also suggest that the defendant retain an attorney to help her decide whether and how to appeal. District court magistrates are not permitted to give legal advice.

Solution to Practice Problem #3

Answer: The Friend of the Court in the circuit court

Explanation: Child support matters related to divorce are heard in the circuit court. The Friend of the Court is a quasi-judicial official who supervises parties’ compliance with child-support orders and who issues warrants to those who fail to comply.

Solution to Practice Problem #4

Answer: No

Explanation: This case involves a juvenile misdemeanor which is not heard by the district court, but rather heard by the family division of the circuit court, which is responsible for hearing and deciding misdemeanor cases involving juveniles under age 17. Note, however, that the district court has jurisdiction over minors who have committed civil infractions under the Michigan Vehicle Code. MCL 257.741(5).

Solution to Practice Problem #5

Answer: No

Explanation: MCL 600.8511(f) states that a district court magistrate has the jurisdiction to issue a search warrant, when authorized to do so by a district court judge. Because your district judge has not authorized you to issue a warrant, you lack the jurisdiction to do so. You should direct the officer to another judge or magistrate who has authorization in your court.

Solution to Practice Problem #6

Answer: No

Explanation: A formal hearing is an appeal of the informal hearing. However, it is a *de novo* proceeding, meaning that the case is heard again as if for the first time. MCL 257.746(5)(b). The district judge may have heard evidence or legal arguments that were not presented at the informal hearing.

Before you go to the next unit, turn to page 1 of this unit and review the instructions. Make sure you have completed each step before moving on to Unit 2.